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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-1801**

State of Minnesota,  
Respondent,

vs.

Donzel Coleon Howard,  
Appellant.

**Filed November 18, 2013  
Affirmed  
Stoneburner, Judge**

Washington County District Court  
File No. 82CR111156

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Pete Orput, Washington County Attorney, Karin L. McCarthy, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Jeremy L. Byellin, Susan E. Byellin, Byellin Law, PLLC, St. Louis Park, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and Hooten, Judge.

**UNPUBLISHED OPINION**

**STONEBURNER**, Judge

Appellant, who is required to register as a predatory offender, challenges his conviction of knowingly violating a registration requirement by failing to register a motor

vehicle “regularly driven by” him as required by Minn. Stat. § 243.166, subd. 4a(a)(6) (2010). Appellant asserts that (1) the vehicle-registration requirement is unconstitutionally vague; (2) the district court misapplied the requirement that appellant knowingly violated the vehicle-registration requirement; (3) there is insufficient evidence to support a finding that he knowingly violated the vehicle-registration requirement; and (4) the district court’s written order does not reflect that the district court applied the appropriate burden of proof in finding that appellant knowingly violated the requirement. Because appellant’s conduct plainly fell within the terms of the statute, the district court did not misapply the element requiring a knowing violation, the evidence is sufficient to support the conviction, the district court applied the appropriate burden of proof, and appellant’s constitutional argument is not persuasive, we affirm.

## **FACTS**

As a result of an adjudication of delinquency in May 2005, appellant Donzel Coleon Howard, who is now an adult, is required to register as a predatory offender with the Minnesota Bureau of Criminal Apprehension (BCA) for ten years from the date of the adjudication. Under Minn. Stat. § 243.166, subd. 4a(a)(6), a person who is required to register must provide to the appropriate authority “the year, model, make, license plate number, and color of all motor vehicles owned or regularly driven by the person.”

On March 6, 2011, a red Ford Crown Victoria (the car), owned by and registered to Howard’s father but driven by Howard, was stopped for traffic and equipment violations. The officer who made the stop determined that Howard had a suspended driver’s license and had not registered any vehicles with the BCA. Howard was charged,

in relevant part, with knowingly violating registration requirements for failing to register the car in violation of Minn. Stat. § 243.166, subd. 5(a) (2010), a felony punishable by up to five years in prison and a \$10,000 fine.<sup>1</sup> Howard waived a jury trial.

At the bench trial, the state presented the testimony of a law-enforcement officer who stopped the car, driven by Howard, for equipment violations on February 26, 2011, and the testimony of the officer who made the March 6 stop. The officer who made the March 6 stop testified that, during the stop, Howard said that he drove the car on a regular basis but did not think he needed to register the car because he did not own it.

The state also presented the testimony of the March 6 passengers. Howard's friend testified that she had been a passenger in the car driven by Howard about six times over the course of the month prior to the March 6 stop. She testified that Howard had driven her to work on four or five occasions and was driving her for errands on March 6. She testified that she heard the conversation between the officer and Howard and that Howard had told the officer that he drove the car when he could get it from his father, but did not tell the officer that he drove the car regularly. Howard's cousin testified that he had seen Howard drive the car three or four times over the period of about a week and that one of those occasions was to take cousin to the hospital. Cousin testified that he heard the officer asking Howard questions and that Howard did not really say anything in response.

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<sup>1</sup> Howard was also charged with failing to register a secondary address, but he was acquitted of this charge.

At the beginning of his case in chief, Howard moved to dismiss the charge, arguing that Minn. Stat. § 243.166, subd. 4a(a)(6) is unconstitutionally vague because “regularly” is not defined sufficiently to give a defendant notice of the legal registration requirements. The court denied his motion.

Howard testified that he did not believe that his use of the car was regular and that he never told the officer that he drove the car regularly. He stated that he drove the car four or five times over a three-month period beginning in December of 2010, when he got his driver’s license. Howard stated that he drove the car to take his mother on errands and to help cousin during his cousin’s illness. Howard testified that these trips often happened on the same day, and he explained that when he took friend to work, it was because her job was on his way home. Howard admitted that he used the car more often in February 2011 than in the prior months because he was helping to care for his cousin.

Howard testified that he did not understand the registration rules because he was too young to drive when he was initially required to register as a predatory offender and because he has a learning disability. Following his delinquency adjudication, Howard completed a form on which he acknowledged, in relevant part, his understanding that he had a duty to register as a predatory offender “in accordance with M.S. § 243.166 and/or M.S. § 243.167,” and that he “must register . . . any changes in my vehicles, employment, any property I own, lease, or rent in Minnesota.” Howard did not list any vehicles on his initial registration or with his registration-verification form in June 2010. Howard did not deny signing and initialing the BCA paperwork detailing his registration requirements, but testified that he did not understand the documents because of his reading level. He

also testified that he did not ask for or receive help in reading or understanding the documents, but he admitted that his mother helped him fill out the forms.

Howard and his parents testified that Howard did not drive the car after March 6. When questioned about two driving citations he received shortly after March 6, Howard did not admit that he was driving the car on those occasions. But Howard testified that he had only once driven a vehicle owned by someone other than his father.

Howard's father testified that he owns the car and does not live with Howard and his mother. Howard does not have his own key to the car and cannot use the car unless he or his mother asks his father, and then his father brings the car to them. Both Howard and his father testified that Howard needs permission from both parents to drive the car. His father had denied Howard access to the car when he needed it for other reasons. Both parents testified that they did not believe that Howard used the car "regularly" and that they restricted his use of the car, in part, to prevent his driving from becoming regular because they knew of the registration requirement. His father was unable to answer clearly how many times Howard had driven the car in the three-month period prior to the March 6 stop, stating he had driven two or three times in that period, but then admitting that it could have been more than that.

Howard's mother testified that she went through the registration paperwork with Howard every year, stating that she read it to him and they discussed it. She stated that when he was initially required to register, she and Howard reviewed the paperwork with Howard's public defender and his probation officer. His mother testified that Howard

drove the car a couple of times between mid-February and the March 6 stop, but did not offer a specific number.

The district court found Howard guilty of knowingly violating a registration requirement. In a written order, the district concluded, in relevant part, that Howard knew about the vehicle-registration requirement; the state proved beyond a reasonable doubt that Howard regularly drove the car and was required to register the car; and Howard “knowingly violated his registration of the vehicle.” This appeal followed.

## **D E C I S I O N**

On appeal, Howard argues that (1) Minn. Stat. § 243.166, subd. 4a(a)(6) (2010) is unconstitutionally vague because the term “regularly” is not defined; (2) the district court misapplied the “knowingly” standard to the statute and there is insufficient evidence to support a finding that he knowingly violated the vehicle-registration requirement; and (3) the district court’s order is insufficient to sustain his conviction because it did not specifically indicate that the state proved beyond a reasonable doubt that he knowingly violated the registration requirement.

### **I. Constitutional challenge to Minn. Stat. § 243.166, subd. 4a(a)(6)**

Minn. Stat. § 243.166, subd. 4a(a)(6) requires a predatory offender to provide the appropriate law enforcement authority with “the year, model, make, license plate number, and color of all motor vehicles owned or regularly driven by the person.” Howard argues the statute is unconstitutionally vague because “regularly” (1) is not defined in the statute, (2) has not been defined in caselaw; (3) has no commonly understood definition; and (4) has no standard application to other statutory provisions. Howard argues that, based

on definitions and uses throughout Minnesota's statutes, "regularly" could mean:

(1) adhering to normal standards or practices; (2) on a fixed time pattern; and (3) a certain number of occurrences within a given time period. Howard argues that, without knowing which definition applies to the registration requirement, he could not know that his use of the car met the registration requirement.

The constitutionality of a statute is a question of law, reviewed de novo. *State v. Wolf*, 605 N.W.2d 381, 386 (Minn. 2000). "The void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *State v. Bussmann*, 741 N.W.2d 79, 83 (Minn. 2007) (quotation omitted). "[W]hen a statute clearly applies to a person's conduct, that person may not successfully challenge the statute for vagueness." *State v. Grube*, 531 N.W.2d 484, 490 (Minn. 1995) (citation omitted); *see also State v. Reha*, 483 N.W.2d 688, 691 (Minn. 1992) (determining that the appellant lacked standing in a void-for-vagueness challenge because she engaged in conduct clearly proscribed by the law).

Because we conclude that, under any of the common definitions of "regularly," including those offered by Howard, his conduct constituted regular use of the car, his constitutional challenge fails. The record shows that before the March 6 stop, Howard drove *only* his father's car, demonstrating that his use of the car was customary. The record shows that Howard drove the car more than 11 times in the month prior to the March 6 stop, demonstrating that his use of the car was frequent. And the record shows that he drove the car to assist his mother in running errands, his cousin in attending to

medical needs, and his friend in getting to work, demonstrating that his use of the car followed a pattern. Because Howard's conduct satisfies any common understanding of the term "regularly," he lacks standing to challenge the constitutionality of Minn. Stat. § 243.166, subd. 4a(a)(6), for vagueness, even though his argument, in the abstract, has some merit.

## **II. Application of knowingly violated and sufficiency of the evidence**

Minn. Stat. § 243.166, subd. 5(a) (2010), provides: "[a] person required to register under this section who knowingly violates any of its provisions . . . is guilty of a felony." Howard argues that the "knowingly" element in the statute was misapplied by the district court because the district court did not require the state to prove, beyond a reasonable doubt, that Howard knew, at the time that he was driving the car, that his use of the car met the threshold for registration and that he was violating the predatory-offender-vehicle-registration requirement. Additionally, Howard asserts that the evidence is insufficient to support such a finding.

### **A. Application of the statute**

Whether a statute was properly construed and applied to the established facts are questions of law, reviewed de novo. *State v. Wenz*, 779 N.W.2d 878, 879 (Minn. App. 2010).

In support of his argument that the court misapplied the "knowingly" element of the charge against him, Howard relies on *State v. Gunderson*, 812 N.W.2d 156 (Minn. App. 2012). But *Gunderson* involved a jury trial in which the issue was the effect of the district court's failure to instruct the jury that Gunderson could only be found guilty of

violating a harassment-restraining order if the jury found that Gunderson knowingly violated the order. *Id.* at 158. The jury was instructed that Gunderson could be found guilty if the jury found that he knew of the existence of the order and also found that his conduct violated the order. *Id.* at 159. Concluding that a properly instructed jury could have found, based on evidence in the record, that Gunderson did not know that his conduct violated the order, this court held that the district court's plain error in instructing the jury affected Gunderson's substantial rights, requiring reversal and remand for a new trial. *Id.* at 163. Because Howard had a court trial, the holding in *Gunderson* has no application to his case.

Here, the district court concluded that the state proved, beyond a reasonable doubt, that Howard regularly drove the car and was required to register the car. And the district court specifically concluded that Howard knowingly violated the registration requirement. Implicit in this conclusion is that Howard was aware of the requirement to register a vehicle he regularly drove and was aware that he regularly drove the car. The conclusion demonstrates that the district court was fully aware of and applied the element of "knowingly" to Howard's conduct, and there is no merit in Howard's assertion that the district court misconstrued the "knowingly" element of the offense.

#### **B. Sufficiency of the evidence**

In considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court

must assume “the [fact-finder] believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). “The standard of review for a claim of insufficient evidence is the same for non-jury and jury trials.” *State v. Hofer*, 614 N.W.2d 734, 737 (Minn. App. 2000).

Howard contends that the findings of fact do not support conviction. He asserts that the district court’s recitation of his testimony is a finding that Howard did not know that he was required to register the car. But this assertion is without merit because a recitation of a party’s claims is not a finding. *Dean v. Pelton*, 437 N.W.2d 762, 764 (Minn. App. 1989).

Howard complains that the district court based its decision on the *circumstantial* evidence that his mother reviewed the registration paperwork with Howard instead of Howard’s direct testimony that he did not understand the registration requirement and did not think that he drove the car regularly. But his mother’s testimony constituted direct, not circumstantial, evidence that Howard was informed about the registration requirement, and the witnesses’ testimony about the frequency and purposes of Howard’s driving was direct evidence of the frequency and regularity of his use of the car. *See Black’s Law Dictionary* 596 (8th ed. 2004) (defining direct evidence as “[e]vidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.”). The evidence is sufficient to support the district court’s conclusions that Howard was not only aware of the registration requirement but also knew that he drove the car regularly. The district court’s rejection of

Howard's testimony to the contrary is a credibility determination, which rests within the province of the fact-finder and to which this court shows great deference. *State v. Johnson*, 568 N.W.2d 426, 435 (Minn. 1997); *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff'd*, 508 U.S. 366, 113 S. Ct. 2130 (1993).

### **III. Burden of proof**

Howard asserts that the district court committed a reversible plain error by failing to include in the written order that the state proved beyond a reasonable doubt that Howard knowingly violated the vehicle-registration requirement. A plain-error analysis requires “that the defendant show: (1) error; (2) that was plain; and (3) that affected substantial rights.” *State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002). An error is “plain” if it is clear or obvious under current law, and an error is clear or obvious if it “contravenes case law, a rule, or a standard of conduct.” *Id.* at 688; *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). The third prong is satisfied if there is a “reasonable likelihood that the error had a significant effect on the [fact-finder’s] verdict.” *State v. Vance*, 734 N.W.2d 650, 660 n.8 (Minn. 2007), *overruled on other grounds by State v. Fleck*, 810 N.W.2d 303 (Minn. 2012). “If those three prongs are met, we may correct the error only if it ‘seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.’” *Strommen*, 648 N.W.2d at 686 (quoting *State v. Crowsbreast*, 629 N.W.2d 433, 437 (Minn. 2001)).

The district court’s failure to repeat the “beyond a reasonable doubt” language in its conclusion that Howard knowingly violated the vehicle-registration requirement is not

plain error and does not demonstrate that the district court failed to hold the state to its burden of proving every element of the charge against Howard beyond a reasonable doubt.

**Affirmed.**